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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 3517 of 2002
Date of decision: 19.11.2007

Surjit Kaur **...Appellant**

Versus

Harchand Singh and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Ms. G.K.Hundal, Advocate for the appellant.

Mr. R.D.Bawa, Advocate for respondent No.1.

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RAJESH BINDAL, J.

The plaintiff is in appeal before this Court against the concurrent findings of fact by both the Courts below whereby suit for declaration, joint possession and permanent injunction filed by her was dismissed.

The claim made in the suit is that she being one of the legal heir of deceased Harnam Singh (one of the daughters), who expired on August 17, 1985 was entitled to inherit his estate alongwith other legal heirs. Harnam Singh died leaving behind one son and four daughters. The suit was filed on April 4, 1994. While contesting the suit, respondent No.1/defendant No. 1 son of deceased Harnam Singh claimed right on the property on the basis of a registered will executed by Harnam Singh in his favour on October 15, 1979. The claim made by the appellant was rejected and the plea of will set up by respondent no.1/defendant no.1, the only son of deceased Harnam Singh was accepted by both the Courts below as will was found to be duly executed and registered document without any inducement or threat. It was concurrently found by both the Courts below that there was no suspicious circumstance leading to the execution of will, which was registered on October 15, 1979 whereas testator died on August 17, 1985. The important aspect which resulted in recording of findings in favour of respondent no.1, the only son of deceased Harnam Singh, was that though Harnam Singh left one son and four daughters behind, however,

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it was only one daughter, who was claiming succession to the property and contesting the will and other three daughters were supporting the claim of their brother. It is important to note that one of the sister namely Dalip Kaur, who was supporting the will and the appellant, both are married to real brothers. It has further come on record that mutation on the basis of will was sanctioned on November 22, 1985 after due notice to the daughters and two of the daughters had infact appeared at that time. However, the other two daughters could not appear as they got late. It has further been brought on record that after the mutation was sanctioned on November 22, 1985 all the four sisters were with their brother in the village and remained there and still to say that the appellant did not have the knowledge about the transfer of the estate of deceased Harnam Singh in favour of respondent no.1 in 1985 is not proved. It is not pleaded by the appellant that her relations with her brother were strained. The suit filed in 1994 was belated as well.

Still further it has come on record that factum about execution of the will was got recorded by the deceased Harnam Singh in the rapat Roznamcha in the village on November 15, 1982 much prior to his death. As against this the submission of learned counsel for the appellant is that usually Harnam Singh used to sign, however, the will contained his thumb impression, which creates suspicion. The same has also been explained by stating that at the time of execution of the will, the testator was quite old and his hands used to tremble and for that reason his thumb impression was taken. The other minor discrepancies in the evidence pointed out by the appellant also do not have the effect of holding that the will in question is false and fabricated document simply for the reason that will was executed on October 15, 1979 and at the time of recording of the evidence in the suit, which was filed almost 20 years thereafter, certain discrepancies can certain occur with the fading memory of the witnesses.

With these facts on record, I do not find any substantial question of law arises in the present appeal and the same is dismissed.

November 19, 2007 **(Rajesh Bindal)**
Pka **Judge**